

**SECRET****SECURITY INFORMATION**

29 February 1952

MEMORANDUM

TO: General Counsel

FROM: Finance Division

SUBJECT: Request for Legal Determination in Regard to FICA Tax

25X1

Attached is memorandum dated 18 February 1952, from [redacted] Resident Auditor, on a construction project, which was written at the suggestion of this office, when the problem regarding FICA tax arose, because of the security considerations at the site and the possibility that the matter may need to be taken up with the Bureau of Internal Revenue before instructions for the auditor may be issued.

An example of the particular problem at hand is set forth in Paragraph Numbered 3 of the attachment, and the feeling of the Contractor as to his position is outlined in Paragraph Numbered 4. The possible position of the Bureau of Internal Revenue is stated in the first sentence of Paragraph Numbered 5, quoted in pertinent part as follows:

"\*\*\*it has been suggested that the Bureau of Internal Revenue may regard each contract of the contractor as a separate employer, \*\*\*".

It does not seem reasonable to the undersigned that the holding of the Bureau would be as quoted above, but if the Bureau's stand is as suggested the comments of the Resident Auditor to the effect that the refund of the over-deduction should not have been made by the contractor is proper.

According to the best information available, any FICA tax withheld (in excess of \$54.00 during the calendar year) that is not adjusted by the employer is for consideration between the employee and the Bureau of Internal Revenue at the time of filing his return for the 1951 calendar year. This possibly presents another problem if the Bureau should regard each CPFF contract of the contractor as a separate employer, because this could result in the employer paying more than one (1) tax for the same employee during a calendar year. The contractor (employer) under A CPFF contract would pass on this excess tax, in this case, to the U. S. Government. Therefore, in order to instruct the Resident Auditor, we would need to know if the contractor (employer) is also entitled to a corresponding refund from the Bureau of the employer's portion of the FICA tax deposited.

During the process of developing this case a Comptroller General's decision was found, which has no bearing on this problem, but may be of interest to your office. It may be found in Volume 31 at Page 139 (B-105872 dated 10 October 1951).

In view of the urgent need for preparing advice to be used as a guide by the Resident Accountant, your usual prompt consideration normally given to "rush matters" will be appreciated.

25X1

Chief, Planning and Field Audit Branch

**SECRET**